IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8053 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION LTD

Versus

RAMESHCHANDRA MANILAL RANA

Appearance:

MR UI VYAS for the Petitioner.

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/10/2001

ORAL JUDGEMENT

With the consent of the parties, the matter is taken up for final hearing today.

The Labour Court, Ahmedabad in Reference (LCA) No.1259 of 1998, passed an order of reinstatement without back wages. The said Award was passed in favour of the

present respondent. The respondent was serving on the post of driver in the S.T. Corporation. He was subjected to departmental proceedings on the ground that, on the relevant date, i.e. on 10th March, 1998, he behaved in a very rude manner and he used some filthy language and abusive words against the Officers and that he was under the influence of alcohol. After conclusion of the enquiry, he was dismissed from service. The aforeaid dismissal was subjected to the aforesaid Industrial Dispute.

The Labour Court, Ahmedabad, while deciding the aforesaid Reference, came to the conclusion that looking to the facts and circumstances of the case and especially considering the charge about using abusive language, it is not a case in which maximum penalty of dismissal was warranted. Therefore, while exercising the powers under Section 11-A of the Industrial Disputes Act, the Court came to the conclusion that the order of dismissal was on the higher side and, therefore, the Court passed an order of reinstatement without back wages. The said order is challenged by the S.T. Corporation by filing this petition.

Mr.Vyas, appearing for the petitioner-Corporation, strongly argued that the respondent was serving as a driver and that he misbehaved with the Officers by using abusive language. He also submitted that it is dangerous for the Corporation to keep such a person on the post of Driver when it was found that he was under the influence of alcohol. According to him, the respondent was supposed to take care of the S.T. bus on Highway and if he drives the vehicle under the influence of alcohol, there are all chances that he may commit some accident and many innocent passengers will be sufferers of such accident. He submitted that this is not a case in which he could have been reinstated on the post of Driver. He also further submitted that, in any case, at least, some penalty was required to be inflicted by the Labour Court even while exercising powers under Section 11-A of the I.D. Act.

Considering the facts and circumstances of the case, I am of the opinion that since the charge against the respondent was that he was under the influence of alcoholic drink, in my view, it is dangerous to keep him or retain him on the post of driver. Considering the totality of the facts and circumstances of the case, therefore, in my view, the Corporation should be permitted to absorb the respondent on any other post

except on the post of Driver. Mr.Rathod has fairly conceded that his client is willing to be absorbed on the post of Peon, or any other equivalent post, provided his pay is protected. If the post of Peon is vacant, the Corporation may consider the same and may accommodate the respondent on the post of Peon. In view of the aforesaid concession of Mr.Rathod and considering the facts and circumstances of the case, while confirming the order of the Labour Court, the Corporation is permitted to absorb the respondent-workman on any other post and if the post of Peon is vacant, the Corporation may try to appoint him on the said post. However, the Corporation may protect his pay which he was getting while serving as a Driver. In the facts and circumstances of the case, in my view, it will not be desirable for the Corporation to reinstate him on the post of Driver and, therefore, liberty is given to the Corporation to appoint him on any other post, like Peon, etc., as indicated above. The concerned workman will also be subjected to penalty of withholding of one increment with future effect.

I am told by both the learned Advocates that the criminal trial is pending under the Bombay Prohibition Act. In that view of the matter, whatever observations which are made herein are only tentative and in connection with the disposal of the present service matter. These observations will not have any bearing in so far as the pending criminal case is concerned and it is needless to say that the criminal case should be decided in accordance with law and as per the evidence which might be adduced by the parties in the said case. It is also clarified that in case any adverse order is passed against the respondent in the criminal case, it would be open for the S.T. Corporation to take appropriate proceedings on that basis and this order will have no bearing in the aforesaid eventuality.

The Corporation may implement this order and the concerned workman will be entitled to his regular salary, etc., from the date of the order of the Labour Court and whatever benefits which are required to be paid to him may be paid within a period of four weeks from today.

Accordingly, the order of the Labour Court is modified and the petitioner-Corporation is directed to reinstate the respondent-workman on any other post except reinstating him on the post of Driver, with protection of pay. The respondent-workman also will be subjected to penalty of withholding of one increment with future effect.

This petition is accordingly allowed to the above extent. Rule is made absolute to the aforeaid extent with no order as to costs.

24th October, 2001 (P.B. Majmudar, J.)

***

(apj)